

08 424223

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joseph Hummel

Serial No.: not yet assigned (continuation of S.N.
07/968,209)

Filed:

Title: KNITTABLE YARN AND SAFETY APPAREL

Docket No.: 10-142C3

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Watts, Hoffmann, Fisher &
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By: Golden M. Dyzalek
Commissioner of Patents and Trademarks
Washington, D. C. 20231

Dear Sir:

PRELIMINARY COMMUNICATION

Applicant has filed a petition to revive application
Serial No. 07/968,209. In response to the final Office
Action dated September 7, 1994, in Serial No. 07/968,209,
applicant has filed a continuation application and this
communication. A declaration of the applicant, Joseph
Hummel, under Rule 132 accompanies this communication and
attests to the unobviousness of the claimed subject
matter over the cited references. Test results are set
forth to show that a fabric knitted from yarn of the
construction shown and claimed in this application,
utilizing a core and a first and second wrapping, at
least one of which is a liquid crystal polymer fiber
having a tenacity of no more than 10 grams per denier,
has greater cut-resistance than a fabric knitted from a
comparable yarn in which a high strength stretched
polyethylene fiber (Spectra) is used in place of the
liquid crystal polymer fiber.

The declaration points out that heretofore applicant

and insofar as he is aware, others, regarded the cut-resistance found to exist with Kevlar and Spectra to be superior to that of other fibers made of synthetic materials, due to the extremely high tenacity of Kevlar and Spectra. The manufacturer of Vectran, Hoechst Celanese, refers to Vectran HS which has a tenacity of 23 grams per denier, as a high strength fiber, while it refers to Vectran M, which has a tenacity of 9 grams per denier, only as a "high performance" fiber. See the enclosed brochure entitled "Vectran Liquid Crystal Polymer Fiber, first page, right hand column, lines 10-14. Its description of fiber elsewhere under the generic term "Vectran" does not import the characteristics of the species Vectran HS to the species Vectran M. It is not clear to what use Vectran M with its low tenacity will be put other than "for applications requiring high impermeability, excellent property retention over a broad temperature range, and low moisture absorption." See second page of brochure, right hand column, under "Composites."

Applicant contends that the examiner has cited no teaching or disclosure that the characteristics of Vectran M provide high cut-resistance on the order of Kevlar, Spectra or Vectran HS. Applicant has contended and now shown that Vectran M has a cut-resistance greater than Spectra in a fabric knitted from yarn constructed in accordance with the claimed invention. This property was not obvious. Nothing in Robins et al., relied upon by the examiner, suggests that Vectran M will provide the cut-resistance of a high tenacity fiber in a composite yarn. Thus, Robins et al. provides no motivation for the substitution of Vectran M for the Kevlar of Bettcher's yarn construction.

Applicant asks for reconsideration of the final rejection on the basis of both the foregoing and the response filed in the parent application on December 1, 1994, which the examiner has not substantively

considered. It is also requested that he clarify the comment in the Advisory Action under paragraph 4. Whether or not the Section 112 second paragraph rejection is appealable or petitionable was not the only issue raised by applicants response to the final rejection of withdrawn claims 7-10. The impropriety of a final rejection of claims on an initial examination is believed petitionable as relating to a procedural matter rather than a substantive issue of patentability. Reconsideration and withdrawal of the final rejection of those claims was therefore properly requested and no response was made to applicant's contention and request.

Applicant acknowledges that the asserted indefiniteness of claims 7-10 is appealable. The reconsideration of that rejection asked for in the amendment after final rejection is repeated with respect to this continuation application. As applicant previously set forth in more detail, the description on page 6 reads on and applies to the structure of Figure 1, which eliminates the understood basis of the indefiniteness rejection.

Reconsideration of the rejection of claims 1-3, 5, 6, 11, 12, 15-18, 25, 26, 35 and 36 as unpatentable over Bettcher in view of Robins et al. is requested on the grounds set forth in applicant's response to the final Office action and to which applicant has not received a substantive reply and to which presumably no consideration has yet been given. It is submitted that reconsideration is especially appropriate and required in view of the declaration of Joseph Hummel submitted herewith, setting forth test results showing the surprising and unexpected high cut-resistance of low tenacity Vectran M. Applicant contends that Robins et al. provides no disclosure of Vectran M much less predictability of the high cut-resistance and hence

provides no motivation for the substitution of Vectran M for high tenacity synthetic fibers in the Bettcher construction.

Respectfully submitted,

Date: April 19, 1995


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